

No. 14,955

IN THE

United States Court of Appeals
For the Ninth Circuit

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

APPELLANT EDWARD RAYMOND EGE'S OPENING BRIEF.

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FILE

JUN 27 1964

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Edward Raymond Ege (hereinafter referred to as Ege), appellant herein, together with two other persons, was indicted on June 15, 1955, in the United States District Court for the Northern District of California and charged in Count 1 with knowingly transporting in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for the purpose of prostitution (Title 18, U.S.C. §2421), and in Count 2 with conspiring knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution (Title 18,

U.S.C., §371; Title 18, U.S.C., §2421). [R. 3-6.] Following a trial by jury, appellant was convicted on each of said counts and sentenced to five years imprisonment, said sentences to run consecutively, making a total of ten years. [R. 37-39.]

This is an appeal from the judgment of the court. [R. 46-47.]

JURISDICTIONAL STATEMENT.

1. The jurisdiction of the District Court:

Title 18, U.S.C., §3231, provides that, "The District courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." The Constitution of the United States, Amendment 6:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury in the state and district wherein the crime shall have been committed."

2. The jurisdiction of this Court upon appeal to review the judgment in question:

Title 28, U.S.C., §1291, provides:

"The courts of appeal shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court."

Title 28, U.S.C., §1294(1), provides:

"Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

“(1) From a district court of the United States to the court of appeals for the circuit embracing the district;”

3. The pleadings necessary to show the existence of jurisdiction:

- (a) The Indictment. [R. 3-6.]
- (b) The Bill of Particulars. [R. 15-16.]
- (c) Verdict of Jury. [R. 29.]
- (d) Motion for New Trial [R. 31-33] and denial thereof. [R. 37.]
- (e) Judgment and Commitment. [R. 48-50.]
- (f) Notice of Appeal. [R. 46-47.]
- (g) Statement of Points on Appeal. [R. 370-371.]

4. The facts disclosing the basis upon which it is contended that the District Court had jurisdiction and this Court has jurisdiction to review the judgment in question will be stated more fully in the subsequent development of the facts of the case. To avoid repetition, the statement is omitted here.

THE INDICTMENT.

The indictment was in two counts. The appellant was made a defendant in both counts. The prosecution contended that both counts related to the same subject matter. The indictment provides as follows:

INDICTMENT

First Count: (Title 18, United States Code, Section 2421.) The Grand Jury charges that:

Edward Raymond Ege, defendant herein, did on or about the 17th day of October, 1953, in the City and County of San Francisco, State and Northern District of California, knowingly transport in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for the purpose of prostitution.

Section Count: (Title 18, United States Code, Section 371.) The Grand Jury further charges:

That Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joseph Victor Bruno, at a time and place to the Grand Jury unknown, in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution.

Thereafter and during the existence of said conspiracy and in furtherance thereof and to effect the objects thereof, one or more of the said defendants, hereinafter mentioned by name, did the following acts:

Overt Acts

1. In June 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California, State and Northern District of California.

2. In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City

and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.

3. In September, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.

4. In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California.

5. In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege, gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell.

6. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with defendant Joseph Boyd, alias Joe Boyd.

7. In October, 1953, defendant Joseph Boyd, alias Joe Boyd, drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona.

8. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California.

9. In October, 1953, defendant Joseph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California.

10. In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell.

11. In October 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California.

12. In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California.

13. In November, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately \$900 from Constance Marie Bell.

14. In December, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City of Barstow, State of California, to the City of Las Vegas, State of Nevada.

A True Bill.

/s/ D. Gordon Tyndall,
Foreman.

STATUTES INVOLVED.

Title 18, U.S.C., §371, provides:

“If two or more persons conspire either to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be (punished as in such statute provided).”

Title 18, U.S.C., §2421, provides:

“Any person who shall knowingly . . . cause to be transported . . . in interstate . . . commerce . . . any woman or girl for the purpose of prostitution . . . shall be (punished as in such statute provided).”

QUESTIONS PRESENTED.

1. Whether there was sufficient evidence to sustain a conviction of the appellant Ege on Count 1.
2. Whether there was sufficient evidence to sustain a conviction of the appellant Ege on Count 2.
3. Whether there was sufficient evidence to establish the jurisdiction and venue in the District Court for the Northern District of California.
4. Whether the appellant Ege was accorded a fair trial in the circumstances of this case.
5. Whether the trial court should have required special verdicts with respect to the overt acts alleged in the indictment (Count 2) under the circumstances of this case.

SPECIFICATIONS OF ERROR RELIED UPON.

1. Insufficiency of the evidence.
 - (a) The evidence is insufficient to support the verdict of guilty on Count 1,
 - (b) The evidence is insufficient to establish the conspiracy charged in Count 2, and
 - (c) The evidence is insufficient to establish venue in the Northern District of California or to confer jurisdiction on the trial court.
2. Improper instructions given to the jury and the rejection of proper and lawful instructions requested by appellant.
3. Improper admission of evidence and misconduct of the trial court.
 - (a) The trial court improperly admitted evidence of the reputation and character of appellant Bruno as part of the Government's case, thereby prejudicing this appellant to such an extent as to deny him a fair trial.
 - (b) The jury was prejudiced by remarks of the prosecutor and trial judge as to the safety of a Government witness (Bell) in such a manner that appellant Ege was denied a fair trial.
 - (c) A prejudicial variance developed among the indictment, the Bill of Particulars and the Government's evidence to such an extent as to deny appellant Ege a fair trial.

THE EVIDENCE.

The evidence produced by the Government in support of the indictment consisted primarily of the testimony of the woman (Constance Marie Bell) alleged to have been transported and to have been the subject of the conspiracy. Portions of her testimony were sought to be corroborated by other witnesses.

All of the evidence pertinent to the appeal herein, including the testimony of appellant Ege, has been

summarized in the opening brief of appellant Bruno, pages 9 to 16 and Appendix A, Section A and Section B, pages 1 to 7, and in the opening brief of appellant Boyd, pages 4 to 20, and appellant Ege hereby adopts the summary of testimony contained and set forth in said briefs without again setting forth the same herein.

FURTHER PROCEEDINGS.

At the close of the testimony offered on behalf of Ege [R. 283-332] the jury was instructed. [R. 334-356.] Exceptions to instructions by defense counsel for Ege were then taken. [R. 356-358.] Thereupon the jury returned its verdict finding the appellant guilty under the first count and second count of the indictment.

Counsel for appellant Ege then made a motion for a new trial [R. 31-33] which was denied by the court. [R. 37.] Thereafter the court pronounced judgment. [R. 38-39.]

ARGUMENT.

I.

A. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT OF GUILTY ON COUNT 1. (Specification of Error 1a.)

Under the testimony of the witness Bell the circumstances of her trip from Arizona to California were not in violation of §2421, Title 18, of the United Staets

Code, under which Count 1 of the indictment is laid, and therefore to which it is restricted.

Bell's testimony in substance is that Ege found her a job in Phoenix [R. 71]; that he said she could go there from California with a girl named Judy and shares expenses with Judy [R. 71]; that she went to Phoenix with Judy [R. 71]; that Ege gave her \$50.00 for her share of expenses [R. 72]; that subsequently Ege suggested by telephone that she go from Arizona to Delano, California [R. 78]; that Ege told her to fly to California and to buy her ticket out of money she had earned [R. 80]; that later Ege picked her up at Barstow, California, and drove her in his Cadillac to Las Vegas where she worked at Roxy's for a day [R. 87]; that she returned to San Francisco in a bus [R. 88].

It will be noted that the offense charged in the indictment, Count 1 thereof, is "... transport ... from San Francisco, California, to Scottsdale, Arizona, a woman ..." [R. 3.] In the Bill of Particulars it is stated that the "woman" referred to is Bell. [R. 15.]

The events described would fall within the purview of §2422 of Title 18, United States Code, which is an entirely separate and distinct crime.

The pertinent language in the two sections is: Section 2421:

"Any person who shall knowingly ... cause to be transported ... in interstate ... commerce ... any woman or girl for the purpose of prostitution";

and Section 2422:

“Any person who shall knowingly persuade, induce . . . any woman or girl to go from one place to another in interstate . . . commerce . . . for the purpose of prostitution.”

In *La Page v. United States* (C. A. 8), 146 F. 2d 536, appellant was the operator of a house of prostitution at Fargo, North Dakota, in which one Dora Thomas had been an inmate, but had left for a vacation at Minneapolis, Minnesota. Appellant telephoned to Thomas, asking her to return, which she did. As stated by the court (p. 537): “Baldly, the evidence is that Dora Thomas made this interstate journey at her own expense because of appellant’s telephone request and that both women understood the immoral purpose for which the trip was to be taken.” Appellant was charged and convicted under Title 18, U.S.C. §398 (now §2421). Although a dissenting opinion was filed in the *La Page* case, the same Court of Appeals in a subsequent decision, unanimously approved the majority opinion of *La Page v. United States*, supra, in *Hill v. United States* (C. A. 8), 150 F. 2d 760.

B. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THE CONSPIRACY CHARGED IN COUNT 2. (Specification of Error 1b.)

The argument contained in the opening brief of appellant Bruno, filed herein, pages 18 to 28, argues that the evidence was insufficient to sustain the conviction of appellant Bruno on the charge of conspiracy

(Count 2). Appellant Ege adopts said argument without setting forth the same herein.

The argument contained in the opening brief of appellant Boyd filed herein, pages 27 to 38, argues that the evidence was insufficient to sustain the conviction of appellant Boyd on the charge of conspiracy (Count 2). Appellant Ege adopts said argument without setting forth the same herein.

If as contended, the evidence is insufficient to show a conspiracy between Ege and Boyd and also is insufficient to show a conspiracy between Ege and Bruno, then it follows that it is insufficient to sustain the conviction of Ege on Count II of the indictment (conspiracy) since Ege cannot be guilty of conspiracy with himself.

C. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH VENUE IN THE NORTHERN DISTRICT OF CALIFORNIA OR TO CONFER JURISDICTION ON THE TRIAL COURT. (Specification of Error 1c.)

The insufficiency of the evidence to establish venue and jurisdiction is argued in the opening brief of appellant Bruno, pages 28 to 39. Said argument in said opening brief of appellant Bruno is directed to the question of venue and jurisdiction as to Count 2 of the indictment. Appellant Ege adopts said argument and submits that the same is applicable insofar as appellant Ege is concerned as to Count 1 of the indictment as well as to Count 2.

II.

IMPROPER INSTRUCTIONS GIVEN TO THE JURY AND THE REJECTION OF PROPER AND LAWFUL INSTRUCTIONS REQUESTED BY APPELLANT. (Specification of Error 2.)

The court erred in not instructing the jurors that they must all agree on at least one of the overt acts.

The court instructed the jury that to establish the charge of conspiracy the Government must prove at least one of the overt acts set forth in the indictment. [R. 341-344.] The court failed to instruct that the jurors must all concur on at least one of the overt acts before a verdict of guilty could be found.

Mr. Stout (attorney for Ege) objected and excepted to the court's charge as failing to instruct as follows: "Unanimity of the jury as to the overt act proved by the government." [R. 357.] The court denied the objection. [R. 358.]

The foregoing failure of the court to instruct that the jurors must all agree on at least one of the overt acts charged requires a reversal of the judgment.

The failure of the court to so instruct that the jurors must all agree on at least one of the overt acts charged is also argued fully in the opening brief of appellant Boyd, pages 21 to 27, and said argument is adopted by appellant Ege without setting forth the same herein.

Also, the same point is argued in the opening brief of appellant Bruno, pages 42 to 53, and said argument is likewise adopted by appellant Ege without setting forth the same herein.

